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CONSULTANT SERVICES AGREEMENT BETWEEN CITY OF SUNNYVALE AND URS CORPORATION FOR ENGINEERING DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR THE MATERIALS RECOVERY SYSTEM AT THE SUNNYVALE MATERIALS RECOVERY AND TRANSFER (SMaRT®) STATION

This AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and URS Corporation ("CONSULTANT").

WHEREAS, CITY desires to secure professional services necessary for investigation, analysis, design, preparation of construction drawings and contract specifications, consultation, services during construction and other services for the replacement of the materials recovery system at the Sunnyvale Materials Recovery and Transfer (SMaRT) Station; and

WHEREAS, CONSULTANT represents that it, and its sub-consultants, if any, possess the professional qualifications and expertise to provide the required services and are licensed by the State of California to practice engineering in the required disciplines;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" entitled "Scope of Work." All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Robert Carn, P.E. to this project, to act in the capacity of Project Manager and personally direct the professional services to be provided by CONSULTANT.

Except as specified in this Agreement, CONSULTANT shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the services required in this Agreement.

2. Notice to Proceed/Completion of Services

- (a) CONSULTANT shall commence services upon receipt of written Notice to Proceed from CITY. Notice shall be deemed to have occurred three (3) calendar days after deposit in the regular course of the United States mail.
- (b) When CITY determines that CONSULTANT has satisfactorily completed the services defined in Exhibit "A," CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has satisfactorily completed the Scope of Work (Exhibit "A"), and if so requested, CITY shall make this determination within fourteen (14) days of such request.

3. Project Schedule

The Project Schedule is set forth in the attached Exhibit "A-1."

4. Payment of Fees and Expenses

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit "B" entitled "Compensation Schedule." All compensation will be based on monthly billings as provided in Exhibit "B." Compensation will not be due until said detailed billing is submitted to CITY within a reasonable time before payment is expected to allow for normal CITY processing. An estimate of the percent of total completion associated with the various categories of the services shall be furnished by CONSULTANT with said billing. When applicable, copies of pertinent financial records will be included with the submission of billing(s) for all direct reimbursables. Compensation shall not exceed the amounts set forth in Exhibit "B" for each phase. In no event shall the total amount of compensation payable under this agreement exceed the sum of One Hundred Fifty Four Thousand Sixty Five and no/100 Dollars (\$154,065.00) unless upon written modification of this Agreement.

5. No Assignment or Sub-Contracting of Agreement

CONSULTANT binds itself, its partners, successors, assigns, executors, and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of CITY. However, claims for money due to or to become due to CONSULTANT from CITY under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to CITY. In case of the death of one or more members of CONSULTANT's firm, the surviving member or members shall complete the services covered by this Agreement. Any such assignment shall not relieve CONSULTANT from any liability under the terms of this Agreement. Consultant shall not sub-contract any portion of the work contemplated and provided for herein without prior written approval of CITY.

6. Consultant is an Independent Contractor

CONSULTANT is not an agent or employee of CITY but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed by CONSULTANT in connection with this Agreement will be employees of CONSULTANT and not employees of CITY in any respect. CONSULTANT is responsible for obtaining statutory Workers' Compensation coverage for its employees.

7. Consultant's Services to be Approved by a Registered Professional

All reports, costs estimates, plans and other documents which may be submitted or furnished by CONSULTANT shall be approved and signed by a qualified registered professional in the State of California. The title sheet for calculations, specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional responsible for their preparation.

8. Standard of Workmanship

CONSULTANT represents and maintains that it is skilled in the professional calling necessary to perform the services and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations reports and other documents furnished under the Scope of Work (Exhibit "A") shall be of a quality acceptable to CITY. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar projects.

9. Responsibility of CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under this Agreement. Neither CITY's review, acceptance nor payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT's negligent performance of any of the services furnished under this Agreement.

Any acceptance by CITY of plans, specifications, calculations, construction contract documents, reports, diagrams, maps and other material prepared by CONSULTANT shall not, in any respect, absolve CONSULTANT for the responsibility CONSULTANT has in accordance with customary standards of good engineering practice in compliance with applicable Federal, State, County and/or municipal laws, ordinances, regulations, rules and orders.

10. Right of CITY to Inspect Records of CONSULTANT

CITY, through its authorized employees, representatives, or agents, shall have the right, at any and all reasonable times, to audit the books and records including, but not limited to, invoices, vouchers, canceled checks, time cards of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years from the date of final payment to CONSULTANT or for any longer period required by law, sufficient books and records in accordance with generally accepted accounting practices to establish the correctness of all charges submitted to CITY by CONSULTANT. Any expenses not so recorded shall be disallowed by CITY.

11. Confidentiality of Material

All ideas, memoranda, specifications, plans, calculations, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for CONSULTANT and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY be used for any purposes other than the performance of the Project services, nor be disclosed to an entity not connected with the performance of the Project services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use CITY's name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

12. No Pledging of CITY's Credit

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

13. Ownership of Material

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared, under this Agreement shall be the property of CITY, but CONSULTANT may retain and use copies thereof.

CITY shall not be limited, in any way, in its use of said material, at any time, for work associated with Project. However, CONSULTANT shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to the release of this material to third parties for work other than on Project.

14. Hold Harmless/Indemnification

To the extent permitted by law, CONSULTANT agrees to indemnify and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property to the extent arising out of any negligent act, error, omission or negligence of CONSULTANT, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CONSULTANT's performance under this Agreement. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence or willful misconduct of CITY, its officers, employees, agents or representatives.

15. Insurance Requirements

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "C."

16. No Third Party Beneficiary

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

17. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY: Marvin Rose, Director
Department of Public Works
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: URS Corporation
Attn: Robert Carn, P.E.
111 SW Columbia, Street, Suite 1500
Portland, OR 97201

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

18. Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

19. Amendments

No alterations or changes to the terms of this Agreement shall be valid unless made in writing and signed by both parties.

20. Integrated Agreement

This Agreement embodies the agreement between CITY and CONSULTANT and its terms and conditions. No verbal agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

21. Conflict of Interest

CONSULTANT certifies that to the best of its knowledge, no CITY employee or officer of any public agency interested in this Agreement has any pecuniary interest in the business of CONSULTANT and that no person associated with CONSULTANT has any interest that would conflict in any manner or degree with the performance of this Agreement.

22. California Agreement

This Agreement has been entered into in the State of California and this Agreement shall be governed by California law.

23. Records, Reports and Documentation

CONSULTANT shall maintain complete and accurate records of its operation, including any and all additional records required by CITY in writing. CONSULTANT shall submit to CITY any and all reports concerning its performance under this Agreement that may be requested by CITY in writing. CONSULTANT agrees to assist CITY in meeting CITY's reporting requirements to the state and other agencies with respect to CONSULTANT's work hereunder. All records, reports and documentation relating to the work performed under this Agreement shall be made available to City during the term of this Agreement.

24. Termination of Agreement

If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.

25. Subcontracting

None of the services covered by this Agreement shall be subcontracted without the prior written consent of CITY. Such consent may be issued with notice to proceed if subcontract consultants are listed in the project work plan.

26. Fair Employment

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background or marital status, in violation of state or federal law.

27. Changes

CITY or CONSULTANT may, from time to time, request changes in the terms and conditions of this Agreement. Such changes, which are mutually agreed upon by CITY and CONSULTANT, shall be incorporated in amendments to this Agreement.

28. Other Agreements

This Agreement shall not prevent either Party from entering into similar agreements with others.

29. Severability Clause.

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

30. Captions

The captions of the various sections, paragraphs and subparagraphs, of the contract are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

31. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

32. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("City")

City Clerk

By _____
City Manager

APPROVED AS TO FORM:

("CONSULTANT")

City Attorney

By _____

Name and Title

By _____

Name and Title

EXHIBIT A
SMaRT Station
REPLACEMENT OF THE MATERIALS RECOVERY SYSTEM
SCOPE OF WORK

1.0 GENERAL

The Consultant is responsible for detail design of biddable documents including cost estimate and schedule to replace all existing equipments at the Sunnyvale SMaRT Station in order to process 1200 tons per day in 2-8 hour shifts at a minimum recovery rate of 20%.

Consultant is responsible to apply and obtain any permit prior to advertising for bid.

The Consultant is to accomplish the Project Goals through the following Phases:

- Phase I Design Development
- Phase II Detail Design
- Phase III Services During Bidding
- Phase IV Services During Equipment Design/Permitting
- Phase V Services During Construction
- Phase VI Preparing As-built

In the following sections, we will describe the tasks associated with each phase.

1.1 PHASE I, DESIGN DEVELOPMENT

The following are the tasks to be completed in this phase:

- 1.1.1 Hold a kick-off meeting to establish the project design criteria, project communications, and collect data as available from the Station.
- 1.1.2 Prepare a Design Criteria Memorandum (DCM).
- 1.1.3 Assemble a list of operating MRFs that may be beneficial to visit and observe equipment operations. Accompany the City on a tour of these MRFs.
- 1.1.4 Visit the SMaRT Station to tour the existing facilities for determination of equipment re-use, electrical layouts, sprinkler and ductwork systems, and accessway preferences.
- 1.1.5 Develop alternate general arrangements of equipment, and types of equipment (minimum of three) for the City's review. These alternates will all be based on a complete shut down of the existing processing equipment to allow for new equipment installation. Meet with the City to review the alternatives, make revisions as required, and together with the City, determine which alternate should proceed into the detail design phase. In this task, the Consultant will

prepare general arrangement plans and elevations which clearly define the different alternates. They will detail:

- 1.1.5.1 Waste flow description.
 - 1.1.5.2 Types of equipment providing the material separations.
 - 1.1.5.3 Accessways for operating and maintenance personnel, including mobile equipment access.
 - 1.1.5.4 Accessways for equipment demolition removal, and installation of new equipment
- 1.1.6 Prepare construction cost estimates for each alternate.
- 1.1.7 The Consultant will also provide, by drawings and descriptions, exactly what is required for revisions to the electrical distribution system and the dust control system.
- 1.1.8 When an alternate is selected for detail design, the Consultant will be able to detail what existing equipment may be feasible for re-use in the new arrangement. This will be detailed for use in the detail design phase.
- 1.1.9 Develop a project implementation plan and schedule which is based on the complete shut down of the existing processing equipment, to allow new equipment installation. These plan(s) will indicate possible laydown areas for construction.

1.2 PHASE II, DETAIL DESIGN

The following are the tasks to be completed in this phase:

- 1.2.1 The Consultant will prepare detailed drawings and specifications for the following:
- 1.2.1.1 Demolition: Details of what equipment is to be removed including electrical and dust control equipment. Details will be included as to what the City may want for disposal of the equipment and what may be retained by the City.
 - 1.2.1.2 Structural: Consultant will provide detail calculation, design drawings, specifications and obtain permit for all structural elements including foundation
 - 1.2.1.3 Electrical: Detail designs and drawing(s) will be prepared to indicate revisions required in the main electrical room and how the power distribution system will be revised for the new equipment arrangement.
 - 1.2.1.4 Mechanical: Detail designs and drawings and specifications will be prepared for revisions to the dust collection equipment and for relocation of fire sprinkler lines.
- 1.2.2 Prepare detailed drawing, specifications and calculations for all new processing equipments, including supporting elements.

- 1.2.3 Prepare construction cost estimates and construction schedules at each submittal stage and ensure it is within budget and meet the schedule.
- 1.2.4 Project Deliverables: Consultant shall submit progress design plans, specification, submittal list, construction schedule and estimates to the City at 30%, 60%, 90% and 100% level. All deliverables shall be complete with plans, specifications and estimates (PS&E). Consultant shall not proceed to the following deliverable phase without written approval by the City.

The following list summarizes minimum deliverables:

30% Submittal

- Four (4) sets of 24" x 36" drawings.
- Three (3) hard copies of the Technical Specifications
- Construction cost estimate.
- Preliminary construction schedule.

60% Submittal

- One (1) CAD disk copy of all plans.
- Four (4) sets of 24" x 36" plans
- Three (3) hard copies of Technical Specifications.
- One (1) electronic copy of Technical Specifications in MS Word format on disk.
- Updated construction cost estimate.
- Updated construction schedule.
- Design presentation
- System design performance specifications.

90% Submittal

- One (1) CAD disk copy of all plans.
- Four (4) sets of 24" x 36" plans
- Three (3) hard copies of Technical Specifications.
- One (1) electronic copy of Technical Specifications in MS Word format on disk.
- Updated construction cost estimate.
- Updated construction schedule.
- List of required submittals.
- Submit and obtain building permit.

100% Submittal

- One (1) CAD disk copy of all plans.
- One (1) stamped, reproducible copy and four (4) sets of 24" x 36" plans.
- One (1) electronic copy of Technical Specifications in MS Word format on disk.
- Updated construction cost estimate.
- Updated construction schedule.

Updated list of submittals.

Resubmit for building permit, if needed, prior to bid solicitation.

- 1.2.5 Assist the City in Contractor/manufacturer Pre-Qualifications, if required.
- 1.2.6 Prepare mass flow diagrams to illustrate the processing volumes, amount of recyclables which can reasonably be expected to recover, and the amount of wastes expected to be sent to transfer.
- 1.2.7 Develop a system control description that illustrates how the system will be controlled, where the main controls will be located, and the equipment to be utilized for overall system controls.
- 1.2.8 Meet with any regulatory/permitting departments and obtain permit.
- 1.2.9 Consultant is responsible to review the Front end documents provided by City and ensure that there would not be any discrepancies with the Final assembled bid documents.

1.3 PHASE III, SERVICES DURING BIDDING

- 1.3.1 Attend pre-bid conference.
- 1.3.2 Respond to proposer questions during the bidding period and assist City staff in the preparation of addenda, if necessary.
- 1.3.3 Review bids received and assist in contractor evaluation.

1.4 PHASE IV, SERVICES DURING EQUIPMENT DESIGN/PERMITTING

These are the services which the Consultant will perform after the contractor is selected and before any demolition, structural revisions, or substituted equipment is installed. The tasks are:

- 1.4.1 Review any contractor-requested changes in design which they may propose and obtain all necessary permits.
- 1.4.2 Review all substitution requests, technical submittals and vendor data to ensure conformance to drawings and technical specifications.

1.5 PHASE V, SERVICES DURING CONSTRUCTION

- 1.5.1 Attend the pre-construction meeting.
- 1.5.2 Respond to Requests for Information (RFIs) from the contractor and provide technical support for City staff, assist with RFI evaluation, and recommend Contract Change Orders, if appropriate.
- 1.5.3 Conduct field visits at key points in the construction to monitor conformance to drawings and specifications.
- 1.5.4 Participate in final punch list preparation and inspection.
- 1.5.5 Confirm proper installation in the areas of 1) conveyor alignments, (2) transfer chute, (3) control devices/electrical connections, (4) field connections, (5) placement of equipment, (6) testing of individual equipment pieces, and (7) system start-up.

1.5.6 Observe equipment start-up and acceptance testing for conformance to specifications.

1.6 PHASE VI, PREPARING AS-BUILT

1.6.1 Prepare a set of “as-built” record drawings based on the Contractor’s marked-up field drawings.

SMART STATION MRF EQUIPMENT PROJECT SCHEDULE

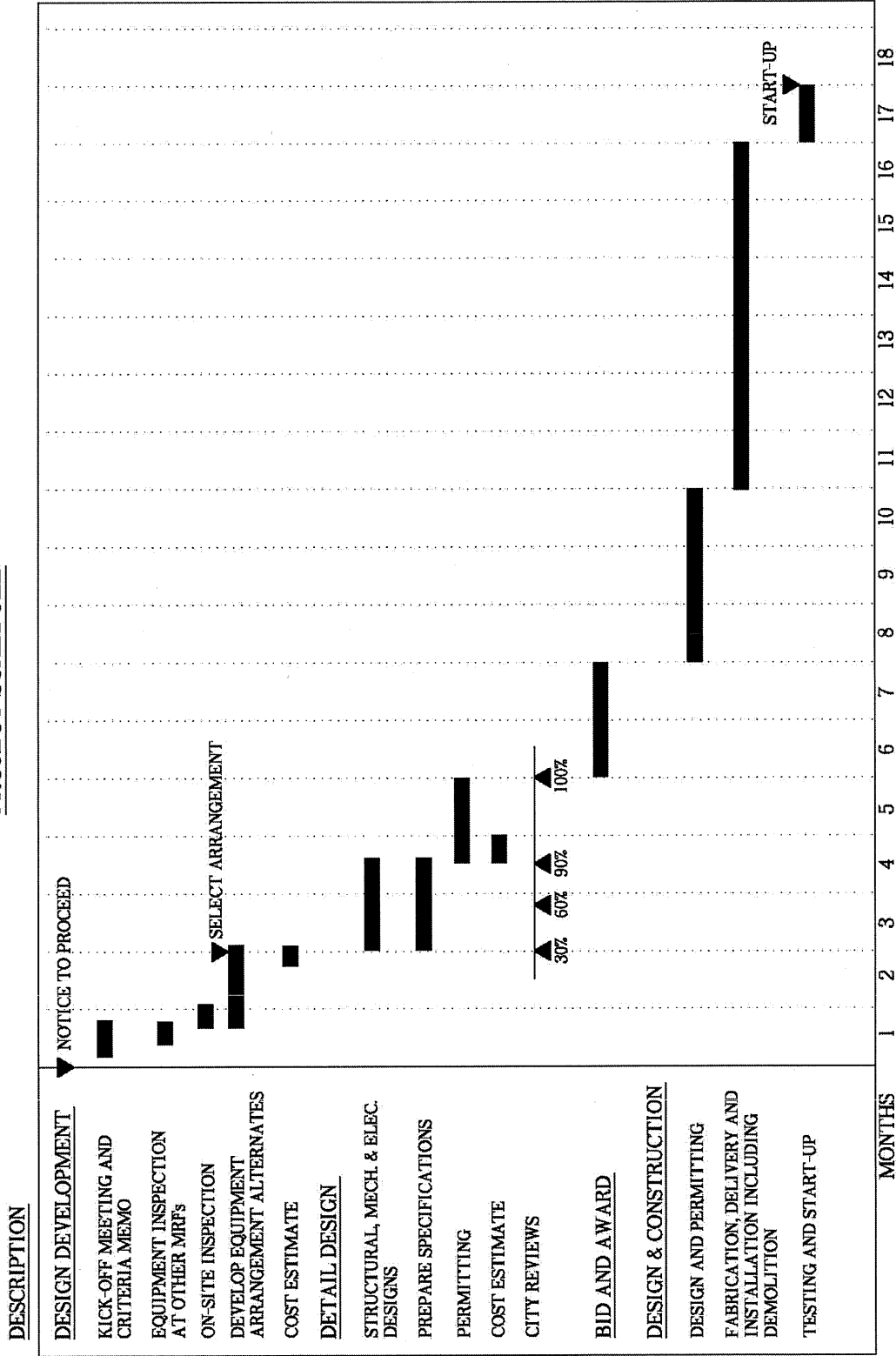


EXHIBIT B

COMPENSATION

The City shall compensate the Consultant for the Scope of Work provided, in accordance with the contract for Consultant Services.

1.0 BASIC COMPENSATION

- 1.1 For Basic Services, as described in Exhibit A, Basic Compensation shall be on a lump sum, not-to-exceed basis as follows:

Phase I	\$ 47,245
Phase II	67,680
Phase III	4,620
Phase IV	7,680
Phase V	18,260
Phase VI	580
Project-Related Expenses	<u>8,000</u>
Basic Services Total	\$154,065

2.0 TERMS AND CONDITIONS

- 2.1 The City and the Consultant agree in accordance with the Terms and Conditions of this Agreement that: if the Scope of the Project or of the Consultant's Services is changed materially, the amounts of compensation shall be equitably adjusted. If the Consultant's Services are not completed within twenty-four (24) months, the rates and multiples set forth in this Agreement shall be adjusted to reflect normal salary review procedures of the Consultant, not to exceed the total agreement compensation.

PROJECT BUDGET

[illegible]

EXHIBIT C INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by CONSULTANT, its agents, representatives, or employees.

Minimum Scope and Limits of Insurance

CONSULTANT shall maintain limits no less than:

1. **Commercial General Liability**: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. ISO Occurrence Form CG 0001 is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. **Workers' Compensation** and **Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.
4. **Errors and Omissions** Liability Insurance appropriate to CONSULTANT's profession: \$1,000,000 per occurrence.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by CITY. CONSULTANT shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** and **automobile liability** policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of CONSULTANT; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents or volunteers, except as follows: Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the

additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.

2. For any claims related to this project, CONSULTANT's insurance shall be primary. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, its officers, officials, employees, agents or volunteers.
4. CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to CITY.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to CITY.

Verification of Coverage

CONSULTANT shall furnish to CITY original Certificate(s) of Insurance and endorsements effecting the coverage required. The Certificate(s) shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by CITY prior to commencement of work.